

# City of Detroit

## CITY COUNCIL

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TO: The Honorable City Council

FROM: David Whitaker *DN*  
David Teeter *DT*

DATE: January 17, 2006

RE: **Cable Equipment Rate Refund Resolution**

The City Council received a request from the Cable Commission to approve a resolution to accept a settlement approving the amended Federal Communications Commission (FCC) Form 1205 Rate Filing by Comcast and the rates agreed to by Comcast. The proposed resolution:

- Accepts and adopts the Settlement.
- Rejects the 2005 Form 1205 Rate Filing by Comcast and approves the amended FCC Form 1205 Rate Filing.
- Orders Comcast to issue refunds to those subscribers that have been charged higher rates for equipment from June 1, 2005 through the date that the amended rates were implemented by Comcast, including any applicable interest.
- Orders Comcast to submit their refund plan to the City Clerk and to the Interim Deputy Director of the Detroit Cable Communications Commission by February 20, 2006.
- Prescribes a framework for approval of Comcast's Rate Filing and for the review of Comcast's 2006 FCC Form 1205 Filing.

It is the recommendation of RAD that before the City Council can adopt the resolution recommended by the Cable Commission, the City Code, Sec. 9.5-4-11 requires notification to the cable operator.

The city council may order a refund to subscribers as provided in 47 CFR section 76.942. Before the city council orders any refund to subscribers, the city clerk shall give at least seven (7) days' written notice to the cable operator by first-class-mail of the date, time, and place at which the city council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for the purpose of submitting comments to the city council.

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The attached resolution, prepared by RAD, authorizes the City Clerk to provide written notice to Comcast that the City Council intends to consider an order for a refund to subscribers at the Regular Session on Wednesday, February 1, 2006. This notification to the cable operator is to provide the cable operator an opportunity to comment before the order to refund subscribers is approved. The City Council may also find it useful to schedule a discussion with Ms. McDermott concerning the settlement with Comcast and the order to issue refunds before the February 1<sup>st</sup> approval date. *A public hearing is also an option, but not a requirement* for the City Council to proceed with the proposed resolution.<sup>1</sup>

According to the information submitted by the Cable Communications Commission, this refund is the result of an audit of Comcast's 2005 FCC Form 1205. Local governments, including Detroit, are empowered to regulate the rates cable providers charge for equipment and installation in addition to the basic cable services. Form 1205, filed with the FCC, covers the rates for equipment and installation. The FCC regulations allow Comcast to implement their proposed rates, specified in Form 1205, ninety (90) days after the filing. The FCC further allows the local governing bodies 12 months for the completion of their review of the FCC Form 1205. Comcast implemented the rates specified in their 2005 FCC Form 1205 on June 1, 2005.

Detroit joined with other municipalities, including Denver, Albuquerque, Washington D.C. and St. Paul, Minnesota in a national review of Comcast rates indicated in the Form 1205.. The review was conducted by the firms of Ashpugh & Sculco and Front Range Consulting. Based on the initial review by the consultants, Comcast offered to negotiate a settlement. The settlement with Comcast provides that an amended replacement 2005 FCC Form 1205 will be filed and that Comcast will refund any overcharges to subscribers for equipment or installation, based on the original Form 1205 filing, beginning June 1, 2005.

Comcast made their settlement offer to the City of Detroit in a letter dated November 4, 2005. The settlement indicates that Comcast shall lower their actual rate in those communities to conform with the "maximum permitted rate" in the particular community and credit any customers that were charged the actual rate rather than the maximum permitted rate. The settlement further provides the procedure to be followed for the 2006 Form 1205 filing with the FCC, which will reflect the methodological adjustments agreed to for 2005, and provide additional information to support their claims of actual cost.

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<sup>1</sup> The City Code, Sec. 9.5-4-8 states that the City Council shall hold a public hearing to consider comments on the cable operator's filing of its schedule of rates for basic service tier or a proposed increase in such rates. This request does not address the rates for basic cable services.

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RAD was also requested to provide information on previous rate refunds or settlements. Ms. McDermott explained that the 2002 rate settlement agreement resulted in a \$750,000 "gift" from Comcast. These funds were used to construct, wire and equip computer classrooms at the Adams Butzel, Butzel and Joseph Walker Williams Recreation Centers. The proposed resolution before the City Council also refers to a Settlement Agreement, between the City and Comcast, dated April 26, 2005, addressing the 2004 FCC Form 1205 concerning rates that became effective May 1, 2004. The settlement of the 2004 FCC Form 1205 did not include any monetary adjustments, according to Ms. McDermott.

The Cable Communications Commission has requested that the City Council approve the Resolution authorizing the amended 2005 FCC Form 1205 filing, and orders Comcast to reduce any rates which exceed the agreed rates, and orders Comcast to submit a refund plan by February 20, 2006. The City regulations require that Comcast be provided written notice at least 7 days before the City Council adopts the Order for the refund.

The attached resolution authorizes the City Clerk to provide written notification to Comcast that the City Council will be adopting an order to refund subscribers on February 1, 2006. This will provide Comcast 19 days to submit their refund plan by February 20, 2006. The City Council will also need to determine if you wish to hold a discussion with the Cable Communications Commission on the Settlement Agreement before the proposed February 1, 2006 date to consider the proposed resolution from the Cable Commission. Please contact RAD if we can provide any additional assistance on this matter.

By Council Member

WHEREAS, The City of Detroit Cable Communications Commission voted to approve a resolution on December 13, 2005 accepting the Settlement Agreement with Comcast regarding the 2005 FCC Form 1205 and recommends the Detroit City Council ratify and implement the Cable Commission's actions; and

WHEREAS, The Settlement Agreement provides that rates specified in the 2005 FCC Form 1205 may be reduced and subscribers that were charged higher rates for equipment and installation services after June 1, 2005 may be eligible for a refund; and

WHEREAS, Section 9.5-4-11 of the Detroit City Code require that before the City Council may order a refund to subscribers, the City Clerk shall give at least seven (7) days written notice to the cable operator of the date, time and place at which the City Council shall consider issuing a refund order and shall provide the cable operator an opportunity to comment.

NOW THEREFORE BE IT

RESOLVED, The City Council authorizes the City Clerk to provide written notice to Comcast Cable by first-class mail that the City Council will adopt a resolution on Wednesday, February 1, 2006 at the Regular Session which begins at 11:30 AM in the Coleman A. Young Municipal Building; the resolution will order a refund to subscribers as provided in the Settlement Agreement that rejects Comcast's 2005 Form 1205 Rate Filing and approves the amended FCC Form 1205 Rate Filing; and BE IT FURTHER

RESOLVED, That Comcast may appear in person, by agent or by letter for the purpose of submitting comments to the City Council before the Resolution and refund order is adopted.